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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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DEC 19 1996

In the Matter of

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Federal-State Joint Board on
Universal Service

CC Docket No. 96-45

COMMENTS OF SPRINT SPECTRUM L. P.
d/b/a SPRINT PCS

For Sprint Spectrum L.P. d/b/a/
Sprint PCS

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Dated: December 19, 1996

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Pursuant to the Public Notice released November 18, 1996, Sprint Spectrum L.P.,
d/b/a Sprint PCS ("Sprint PCS")¹ submits the following comments on the Recommended
Decision of the Federal-State Joint Board.²

SUMMARY

The Recommended Decision sets out a promising framework for implementation
of the universal service provisions of the 1996 Act. In formulating rules to complete that
framework, however, the Commission should promote affordable service through

¹ Sprint Spectrum, L.P. is a joint venture formed by subsidiaries of Sprint Corporation, Cox Communication, Inc., Tele-Communications, Inc. and Comcast Corporation to provide nationwide wireless services. Sprint Spectrum, L.P., through its affiliates, holds broadband (A and B Block) PCS licenses in 30 Major Trading areas ("MTAs"). It also has interests in the licenses for the Philadelphia MTA, the Washington, D.C.-Baltimore MTA and the Los Angeles-San Diego MTA. Sprint Spectrum, L.P.'s affiliate American Personal Communications currently provides PCS services in the Washington, DC-Baltimore MTA. In addition, Sprint Corporation's subsidiary SprintCom, Inc. is an applicant in the ongoing D, E, and F Block PCS auction, and currently holds the high bid for 160 licenses in 139 markets.

² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 96J-3 (Nov. 8, 1996) ("*Recommended Decision*").

competition, rather than through an indefinitely-expanding program of transfers from one group of consumers to another. Accordingly, the Commission should adopt, as an additional principle under section 254 of the Act, the goal of minimizing the growth and overall size of the universal service subsidy. In accordance with this principle, the Commission also should mandate competitive bidding for support payments wherever possible, a competitively-neutral service area definition, and a straightforward and equitable method of ascertaining the level of contributions that carriers must make to the universal service fund.

I. The Competitive and Deregulatory Goals of the Act Require that Control of the Size of the Universal Service Fund be Adopted as an "Additional Principle" under Section 254.

The principal goal of the 1996 Act is to create a "pro-competitive, de-regulatory national policy framework" for the telecommunications marketplace.³ Any system of subsidies -- even the explicit, predictable subsidies contemplated by section 254 -- inevitably undermines this goal by regulating rates and distorting price signals, both for those customers that benefit from the subsidy and those customers that pay for it.⁴ In order to achieve the intent of Congress, therefore, the level of universal service subsidies must be held to the minimum required to comply with the universal service provisions of the Act.

³ 142 Cong. Rec. 1145 (1996).

⁴ See, e.g., Comments of Teleport Communications Group, Inc. (Apr. 12, 1996) at 17.

As past experience teaches, however, controlling the growth of the universal service fund cannot be accomplished with traditional regulatory approaches. In 1993, for example, the Commission found that in spite of its efforts to reform the system, "growth in the [Universal Service Fund] since its implementation in 1986 [went] from \$445 million to more \$700 million, . . . [with fluctuations in the rate of growth] from approximately one percent to more than 19 percent."⁵ At the recommendation of the Joint Board, the Commission responded to this problem by capping the fund and proposing a number of reforms, including the possible adoption of proxies or competitive bidding.⁶

Controlling the size of the fund will become even more critical -- and challenging -- in the months and years ahead. The 1996 Act widens, rather than narrows, the range of recipients of universal service supports by creating new entitlements for schools, libraries and rural health care providers.⁷ At the same time, the Commission is preparing to reform access charges by reducing or eliminating the extensive, implicit subsidies for

⁵ *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, Report and Order, 9 FCC Rcd 303 (1993).

⁶ *Id.* at 306-307; *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, Notice of Inquiry, 9 FCC Rcd 7404 (1994); *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, Notice of Proposed Rulemaking and Notice of Inquiry, 10 FCC Rcd 12309 (1995).

⁷ Telecommunications Act of 1996, P.L. No. 104-104, 110 Stat. 56 ("1996 Act"), sec. 254(h)(1)(A), 254(h)(2).

local service built into that system.⁸ Both of these developments will increase, rather than reduce, the pressure on the universal service support system.

As the Commission pointed out in its Notice of Proposed Rulemaking in this proceeding, "[t]he method [of supporting universal service] should be . . . designed to identify the minimum subsidy required to achieve the statutory goal of affordable and reasonably comparable rates throughout the country."⁹ Given the importance of this goal to the overall aims of the 1996 Act, the Commission should exercise its discretion, under section 254(b) of the Act, to adopt that goal as an additional principle of the reformed universal service system.¹⁰

II. The Commission Should Adopt a Universal Service System Based on Competitive Bidding.

Sprint PCS agrees with the Joint Board that a system of high-cost supports based on an appropriate proxy cost model would represent a substantial improvement over the present system and its reliance on carriers' reported costs. Sprint PCS urges the Commission to adopt a proxy model and direct that all support payments to incumbent local exchange carriers be based on that model.

⁸ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, FCC 96-325 (Aug. 8, 1996) at para. 8.

⁹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 96-93 (Mar. 14, 1996) ("NPRM") at para. 27.

¹⁰ Sprint PCS also agrees with the Joint Board's recommendation that the Commission adopt competitive neutrality as an additional principle to guide the Commission in implementing the universal service provisions of the Act. *Recommended Decision* at para. 349; 1996 Act sec. 254(b)(7).

The Recommended Decision also urges the Commission, however, to "continue to investigate how to structure a fair and effective competitive bidding system" to set the level of universal service support in rural, insular and high cost areas.¹¹ Sprint PCS concurs in this recommendation, and believes that although meaningful competition in high-cost areas will not appear immediately, the Commission should investigate the competitive bidding approach with a view to defining such a system by the time new entrants are prepared to serve high-cost areas in competition with the incumbents. Thereafter, competitive bidding should be used instead of proxy costs to set the level of support wherever more than one carrier is prepared to offer universal service.

As the Joint Board recognizes, competitive bidding, properly implemented, will exert continual downward pressure on the overall size of the high-cost fund.¹² Proxy approaches reward carriers for cutting costs, but provide no incentive for carriers to reduce their demands on the high-cost fund.¹³ A well-designed system of competitive bidding, by contrast, reserves its strongest incentives for carriers that bid to accept lower subsidies than the carriers with which they compete. A system of this kind -- particularly

¹¹ *Recommended Decision* at para. 349. See also Comments of LDDS Worldcom at 12-13; Comments of Alliance for Local Telecommunications Services at 12; GTE Comments at 11; Comments of National Cable Television Association at 11; PCIA Comments at 15-16; CSE Foundation Comments at 11-12.

¹² *Recommended Decision* at para. 343.

¹³ Under the proxy system endorsed by the Joint Board, the Commission will set a "nationwide benchmark" at the nationwide average revenue-per-line. *Recommended Decision* at para. 311. Once the benchmark is established, each "carrier's draw from the federal universal service support mechanism for serving a customer would be based on the difference between the costs of serving a subscriber calculated using a proxy model and the benchmark." *Id.* at para. 309. Unlike competitive bidding, this proposed proxy system includes no mechanism or incentive for carriers to reduce their demand on the fund below the number produced by the static proxy/benchmark formula.

where bidding is reopened periodically -- will discipline carriers to improve the efficiency of their technology and operations on a continuing basis, and will insure that they share those efficiencies with the consumers who ultimately pay for any system of subsidies.

A second advantage of competitive bidding is its tendency to reduce the role of regulation in the universal service system. The proxy system involves regulators in cost-based rate making, and will impose stringent compliance and enforcement burdens on carriers and regulators alike.¹⁴ Competitive bidding, on the other hand, requires no cost studies and no regulatory intervention beyond the creation and enforcement of procedures for the proper conduct of auctions.

Finally, competitive bidding is best calculated to bring the efficiencies of wireless and other advanced technologies to rural, insular and high cost areas. The proxy models so far proposed are based on the infrastructure of the wireline incumbents. Application of proxy models to alternate technologies will require further rounds of hotly-disputed cost studies, with all of the attendant regulatory burdens. Competitive bidding avoids this costly detour and permits new entrants to bid down the cost of universal service directly, wherever those carriers are prepared to offer service.

For all of these reasons, Sprint PCS supports adoption of a universal service support mechanism under which all companies that are prepared to meet the obligations of eligible telecommunications carriers for a given geographic area shall propose, through

¹⁴ The costs of regulation will begin with the contentious effort to adopt a proxy model, and will continue with the inevitable updating of the model to take into account evolving technology or changes in the definition of universal service. Equally inevitable are the waiver motions and other challenges by which carriers that find themselves disadvantaged by the proxy model will seek relief from its constraints.

competitive bidding, the level of universal service supports they will require in order to provide that service. The lowest bid will establish the level of universal service supports available to all eligible telecommunications carriers in the area, and will supplant the level of support established by the proxy model. While all eligible carriers -- not just the low bidder -- will be permitted to offer service and to receive subsidies at the level set by the low bid, only the low bidder will receive an additional, bonus payment beyond the universal service subsidy.¹⁵ In order to encourage new entrants and maintain downward pressure on the system, bidding should be reopened at a reasonable, set interval.

The role of proxies, on the other hand, should be limited. Proxies should be used only to establish support levels for incumbent, wireline carriers in areas where new entrants have not yet offered to bid against them.¹⁶ For this limited purpose, Sprint PCS supports the Joint Board's recommendation that a comparison between a nationwide benchmark and a proxy cost model, based on the forward-looking incremental cost of service, should establish the level of support for incumbent carriers.¹⁷

¹⁵ See *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, Notice of Proposed Rulemaking and Notice of Inquiry, 10 FCC Rcd 12309, 12342-43.

¹⁶ See, e.g., Comments of the National Cable Television Association, Inc., at 13. ("...[T]he required support level could be established through the use of the BCM and subsequently competing carriers (in particular, those that may be more efficient) would be allowed to bid down the required support level by offering to serve customers while receiving a lower support amount." *Id.*)

¹⁷ *Recommended Decision* at para. 269.

III. New Entrants Should Be Permitted to Bid for Universal Service Support at the Census Block Group Level.

In order to ensure prompt, efficient entry into high-cost markets, the Commission should find -- or encourage the states to find -- that carriers may choose to bid on universal service supports for individual Census Block Groups (CBGs) or aggregations of CBGs.¹⁸ Reliance on Census Block Groups, rather than larger units such as exchanges, wire centers and traditional service areas, will bring competition to high-cost areas more quickly. Census Block Groups also tend to be more homogeneous, as to cost of service, than exchanges, wire centers or service areas, and therefore permit more precise identification of the cost of providing universal service.¹⁹

Permitting new entrants to bid for supports in CBGs or aggregations of CBGs also serves the Act's goal of competitive neutrality. As the Recommended Decision recognizes, "if states simply structure service areas to fit the contours of an incumbent's facilities, a new entrant, *especially a CMRS-based provider*, might find it difficult to conform its signal or service area to the precise contours of the incumbent's area."²⁰

¹⁸ See GTE Further Comments at 54; *see also* Sprint Comments at 15; Sprint Reply Comments at 13; Pacific Telesis Comments at 18 n.33. California already has announced that it will rely on Census Block Groups to establish support levels for its intrastate universal service program. Comments of California Public Utilities Commission at 9-10.

¹⁹ States should adopt geographic areas other than Census Block Groups only in those rural areas where the CBG is so large that it no longer is effective in distinguishing high-cost from low-cost customers. In these cases, a smaller unit of measurement, such as the Census Block, may be appropriate. *See* GTE's Comments on Cost Models, CC Docket No. 96-45 (Aug. 9, 1996) at 8.

²⁰ *Recommended Decision* at para. 176 (*emphasis added*).

Exchanges, wire centers and service areas all are units based on the architecture and geographic coverage of incumbents' networks, and their application to new entrants is inherently anticompetitive.

The 1996 Act gives the Commission ample authority to designate areas in which carriers may bid for universal service support. While section 214(e) gives the state commissions the authority (concurrently with the FCC and the Joint Board) to designate service areas for rural carriers, the Act does not limit the ability of the Commission to designate service areas for nonrural carriers, and to disaggregate state-created service areas for purposes of administering the universal service system.²¹ And even if the Commission should choose not to designate Census Block Groups directly as the area for which auctions will be effective, the Commission has full authority to preempt contrary state designations that are inconsistent with the competitive goals of the Act.²²

IV. Carrier Contributions to the High-Cost Fund Should be Based on the Number of End Users Served by the Contributing Carrier.

The Recommended Decision concludes that contributions to the universal service fund should be based on carriers' gross revenues from interstate and intrastate telecommunications services, net of payments to other carriers.²³ The net gross revenues approach, however, offers opportunities for gaming the system that the Joint Board fails to recognize. Notably, as the Recommended Decision acknowledges, the Act's

²¹ 1996 Act, *supra*, sec. 214(e).

²² As the Joint Board points out, a state's designation of an unreasonably large service area might violate sections 253 and 254(f) of the 1996 Act. *Recommended Decision* at paras 177-178.

²³ *Id.* at para. 807.

definitions of “telecommunications” and “telecommunications service”²⁴ already exclude enhanced services.²⁵ As the rapid advance of communications technology creates new services that strain the Act’s definitions in unexpected ways, carriers subject to the Joint Board’s proposed system will characterize as many of their services as possible as nontelecommunications services, with resulting confusion and enforcement problems for regulators.²⁶

Instead of the approach recommended by the Joint Board, Sprint PCS urges the Commission to explore the possibility of basing carriers’ contributions on the numbers of subscribers they serve. Unlike the per-line or per-minute methods that the Recommended Decision rejects, a per-subscriber charge does not require the adoption of complex equivalency ratios for carriers that do not offer service on a per-line or per-minute basis.²⁷ And unlike revenues-based approaches, such as the method recommended by the Joint Board, a per-subscriber system would be simple, fair and relatively immune to gaming.²⁸

²⁴ 47 U.S.C. sec. 153(43)-(46).

²⁵ *Recommended Decision* at para. 790.

²⁶ For an instructive parallel, the Commission might recall the efforts of the Bell operating companies to define their services so as to avoid the constraints of the Modified Final Judgment on information services. For a brief review of this history, see Michael K. Kellogg, John Thorne and Peter W. Huber, *Federal Telecommunications Law* 315-327 (1992).

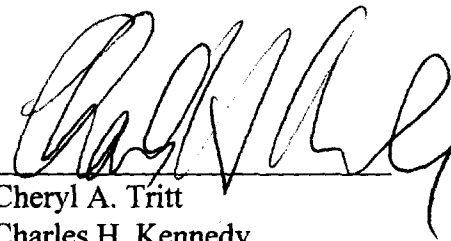
²⁷ *NPRM* at para. 124; *Recommended Decision* at para. 812.

²⁸ The Joint Board bases its recommended approach, in part, on experience with the Telecommunications Relay Service (TRS) fund. That fund, however, is relatively small and gives carriers no strong motive to manipulate its formula so as to minimize contributions. The high-cost fund, on the other hand, will be several orders of magnitude larger and more burdensome than the TRS fund, and carriers will be strongly motivated to exploit any ambiguity in its contribution formula.

CONCLUSION

The Joint Board's recommendations are a useful step in the direction of opening high-cost markets to effective competition while reducing the need for subsidies. If the Commission supplements those recommended actions with a system of competitive bidding at the Census Block Group level, and assesses contributions to the system based on the number of subscribers the contributing carriers serve, the reformed universal service system will bring prompt benefits to all consumers of telecommunications services.

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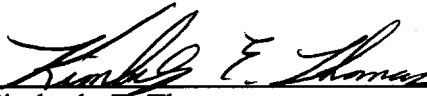
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